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## Navigating Social Networks

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**When it comes to balancing free speech and schools' responsibilities, the online world is largely uncharted waters.**

Maybe Big Brother really is watching. OK, it probably isn't Big Brother, but everyone else on the social network is watching—and reading. What was once personal or private may now be everyone's business. Facebook alone has 483 million daily users and growing (Gans, 2012). As more and more students and educators join social networks, the lines between individual rights and school rules are becoming a bit blurred.

Online social networking enables individuals to connect with family and friends, play games, and express themselves. It's that last element that tends to get users of social networking tangled up. Posts on sites like Facebook have the potential to reach a vast audience in a very short time. It's one thing to have an opinion, but it's something else to share it with the world, especially in a permanent format.

Combine social networking and school, and where does that get you? Often into uncharted waters.

### Students' Rights: An Incomplete Map

A number of court cases provide some guidance for how to balance schools' responsibilities and students' constitutional rights online. Students and school officials may believe that what happens outside school is not a school problem. If a student uses inappropriate language or calls his teacher names while chatting with his friends on a social network from his own home, what business is that of the school's?

Well, a school in Minnesota apparently believed that comments a 12-year-old student posted on Facebook called for an official response (*R. S. v. Minnewaska Area School District No. 2149*). The student, R. S., was given a detention and required to write an apology after she posted comments about an adult hall monitor, even though the posting took place outside school. After she used an expletive when commenting on Facebook about the punishment, she was given an in-school suspension. Finally, after another student's mother expressed concern that R. S. was communicating with her son on Facebook about sex, R. S. was called to the office and told by two school employees and a deputy sheriff to relinquish her Facebook password, which they used to search her Facebook account. With the backing of the American Civil Liberties Union, R. S. is now suing the school (McCormack, 2012).

This is not the first time a student has filed a suit against a school because that student felt his or her constitutional

freedoms had been compromised. In the landmark case *Tinker v. Des Moines Independent Community School District* (1969), three students were suspended for wearing black armbands to school to protest the United States' involvement in the Vietnam War. Learning in advance about the students' plans to protest, the school's administrators had instituted a rule that any students wearing such armbands to school would be suspended until they returned without the armbands. The case went all the way to the U.S. Supreme Court. In a ruling that has been cited repeatedly in subsequent legal cases, the court stated that "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Students have the right to express themselves, said the court, as long as their actions don't disrupt the school's learning environment.

Even though we are now dealing with technology and personal freedoms, the 1969 *Tinker* test is still good law. In cases in which students have posted comments or created fake websites about school officials (*J. S. v. Bethlehem Area School District*, 2002; *J. S. v. Blue Mountain School District*, 2012; *Layshock v. Hermitage School District*, 2012), judges continue to support First Amendment freedom of speech rights, provided that students' behavior does not substantially disrupt the school day.

On the other hand, we need to acknowledge that a lot has changed since *Tinker*. According to O'Brien Louch and Frketch (2011), "Because *Tinker* was decided in a world where cellular phones, personal computers, the Internet, and cyberbullying did not exist, revisiting its legal value is a necessity" (p. 1). Some student online behaviors, such as bullying, harassment, and making threats, may not be protected under the First Amendment.

For example, in *Kowalski v. Berkeley County Schools* (2012), a West Virginia high school student created a webpage titled SASH (an acronym for Students Against Sluts with Herpes) to ridicule another student. The school handbook had a policy prohibiting harassment, bullying, and intimidation. Kowalski was suspended for five days, was kicked off the cheerleading squad, and was given a 90-day social suspension that prevented her from participating in social events. The Fourth Circuit Court of Appeals affirmed the ruling of the federal district court that the school had not violated Kowalski's free speech rights. Even though she created the website at home, her intent was to bully a classmate at school, and such bullying had the potential to disrupt the learning environment.

## Teachers' Rights: Venturing into the Unknown

Behavior on social networks can affect not only students, but also teachers. Most teachers understand that they are considered role models and will be held to a high standard of professional and personal conduct. If a teacher uses inappropriate language in the classroom, he or she can expect to be reprimanded or perhaps even suspended. But what if the teacher used the same inappropriate language on his or her Facebook page? Would this be grounds for disciplinary action from the school? *Tinker* (1969) would suggest that the teacher's First Amendment freedom of speech rights would apply, but school officials might argue that the teacher was acting unprofessionally. Legally, these issues are still largely uncharted.

A case in point: A Bradenton, Florida, high school theater teacher allegedly used acronyms for profane language and posted images that were sexually suggestive on his Facebook page, on which he had friended more than 100 students. Although the district had no official district policy against friending students online, the teacher was first terminated and then, after he challenged the decision, was reassigned to a position in which he would have little contact with students and would have to apply for a new contract annually (Hawes, 2012).

Even when teachers' social networking sites are not accessible to students, comments on such sites that are perceived as inappropriate can get the teachers into trouble. Teachers know they shouldn't vent to others about their students or about school issues, even when the "others" are their colleagues. Unfortunately, the news is full of stories about teachers who seemed to forget that there's no such thing as privacy online. For example, a New Jersey teacher was dismissed after posting on Facebook, "I'm not a teacher—I'm a warden for future criminals." The community was angered by her comments, which were characterized as "racist" (Aziz, 2011). And a Brooklyn teacher ended up fighting for her job after she vented her frustration on her "private" Facebook page, which was only viewable by her adult Facebook friends; the day after a 12-year-old Harlem student drowned on a class trip to the beach, she had written, "I'm thinking the beach is a good trip for my class. I hate their guts" (Pleshaw, 2011).

When teachers use social networks to vent, they are no longer talking to a close friend; they are potentially sharing their thoughts with a billion other people. In a case that went to court, a college senior was dismissed from her student-teaching assignment because of her posts to a social network website, which included negative comments about her supervisor and pictures of the student herself drinking. Because she was unable to complete her student teaching, she had to graduate with a degree in English and not education (*Snyder v. Millersville University et al.*, 2007). As Mike Simpson (n.d.), assistant general counsel of the National Education Association, points out, "teacher free speech rights are fairly limited: Their speech is protected only if they speak out as citizens on 'matters of public concern' and their speech doesn't disrupt the school."

## Proceed with Caution

As this brief review shows, there are still many questions about the rights of both students and teachers in the world

of social media. Although the lower courts have ruled that students' freedom of speech rights offer them some protection for comments made on social media when they are outside of school, the U.S. Supreme Court has declined to accept any cases dealing with this issue (Stohr, 2012). In the meantime, teachers appear to be held to a higher standard, and they should be aware that comments they make on social networking sites may make them vulnerable to charges of unprofessional conduct.

The world of technology has blurred the lines of individual rights and school rules after the last bell rings. It is just a matter of time before the U.S. Supreme Court steps in and gives us more solid rules to follow. Until then, educators would be wise to think of their social networking identity as an extension of who they are in the classroom, and to navigate with care as they venture into this new world.

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